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## SUMMARY

Tellme Networks, Inc. (“Tellme”) is a leading provider of voice activated information services so it has a significant interest in assuring that the Commission carefully crafts any regulatory scheme affecting IP-enabled services. The Notice of Proposed Rulemaking (“*NPRM*”) addresses numerous issues as telecommunications networks migrate from circuit-switched to IP-based technology. Tellme urges the Commission to regulate IP-enabled services using a deregulatory “hands off” approach toward enhanced and information services as mandated by the Communications Act generally.

Any class of IP-enabled services subject to regulation must be narrowly-defined. The Commission must ensure that in developing a definition for “IP-enabled services,” and classifying such services for purposes of any regulatory scheme that may be applied, it acts in a fashion that will not inadvertently create an over-inclusive regulatory regime that sweeps in IP-enabled services or applications which are, in fact, “information services.” If the Commission casts too wide a net, Tellme and other information service providers could be forced to balance new technology advances and features against the costs, expenditures and uncertainties of regulatory compliance.

The general migration to IP-enabled networks does not require a substantial reclassification of existing services, but the Commission must recognize that over time innovations may expand the scope of offerings classified as information services. Moreover, statutory interpretations from 15 years ago may be less tenable in an IP environment. While the telecommunications industry’s migration to IP-based technology certainly warrants a fresh look at the way the Commission regulates all types of telecommunications services generally, and voice telephony in particular, the Commission should not dismantle or constrict the deregulatory framework in which information services and applications have been developed over the last few decades.

Moreover, an information service provider’s mere use of telecommunications in its offering does not render it a provider of telecommunications services. At no point is Tellme (and similarly situated information service providers) providing telecommunications services to the end user. Rather, telecommunications is simply an input to the underlying information service – precisely as Congress defined “information service” in the Act.

The various regulatory paradigms discussed in the *NPRM* can and must be reconciled with Congress’s deregulatory mandate. To the extent that regulation of IP-enabled services is compelled by statute or otherwise necessary in the public interest, the layered approach can offer a legitimate -- but imperfect -- framework. The key element, in Tellme’s view, is the ownership of *bottleneck* facilities. An information service provider that does not own, but merely utilizes, those facilities should not subject the information service provider to regulation. IP-enabled services that are offered as “common carriage” versus a “private carriage” basis also may provide a useful framework. For example, even to the extent that components of Tellme’s services might be included under an IP-driven definition of “telecommunications,” it does so on

a private carriage basis to transmit calls between its own network and those of its private enterprise customers.

Finally, Tellme and other customers of telecommunications services already support Commission regulatory programs such as universal service and the telecommunications relay services (“TRS”) fund. Contribution obligations may not be extended to providers of information services such as Tellme. Such information service providers already effectively contribute indirectly to virtually all of these regulatory programs through the rates that they pay to the providers of their underlying telecommunications services.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
IP-Enabled Services	)	WT Docket No. 04-36
	)	

To: The Commission

**COMMENTS OF TELLME NETWORKS, INC.**

Tellme Networks, Inc. (“Tellme”) hereby submits its comments in response to the Commission’s March 10, 2004 *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> As a leading provider of voice activated information services, Tellme has a significant interest in assuring that the Commission carefully crafts any regulatory scheme affecting IP-enabled services. The *NPRM* raises a myriad of issues that must be addressed as telecommunications networks migrate from circuit-switched to IP-based technology. Tellme urges the Commission to make sure that, however it may opt to regulate IP-enabled services, the deregulatory “hands off” approach toward enhanced and information services mandated by the Communications Act (the “Act”) generally continues in effect.

**INTRODUCTION**

Tellme’s services unite the Internet and wireline and wireless telephony networks via an elegant speech user interface to enable consumers to access the world’s largest voice application network. Tellme provides an interactive service that utilizes the Internet and proprietary voice technologies to enable access to, and exchange of information via, the telephone through a voice

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<sup>1</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) [*“NPRM”*].

interface. Tellme's technology provides numerous beneficial applications including interactive automated application services, automated directory assistance services, automated customer care applications for a number of Fortune 500 companies, and other communication applications such as voice activated dialing. Tellme's service is not offered directly to end users; instead, Tellme has created partnerships with carriers to develop new and innovative ways for their consumer subscribers to access information and communicate with others.

For example, Tellme's interactive automated applications use existing Web sites to power popular 1-800-XXX-XXXX phone numbers like 1-800-E\*TRADE and 1-800-FANDANGO. As another example, Tellme provides AT&T Wireless callers a VoiceDial feature that allows access to a vast information database by simply pressing #121 on their wireless phone to access and connect to a virtually unlimited number of information directories. Every day, millions of callers utilize applications like these using Tellme to obtain customer service, connect to a directory assistance listing, or access information such as the latest sports scores, stock quotes and news. Tellme's applications do not require dual tone multifrequency ("DTMF") signaling; rather, all that is required is the human voice to access menus and information, perform ordering and conclude simple transactions. In that respect, Tellme already has garnered a substantial following in the blind and disabled population by allowing access to important services for consumers who are restricted in the use of their hands, or who may be sight-impaired. For example, Tellme's voice activation system provides sight-impaired persons with an accessible voice activated directory. Further, Tellme also provides a speech interface which converts text messages to voice messages.

## **I. Innovation Will Thrive in an Unregulated Environment**

Tellme and other providers of applications that ride on IP-based networks have been able to develop new and enhanced communications functionalities in large partly because they have functioned in an unregulated environment. Tellme has created, tested and implemented extremely beneficial applications for telephone users without government intervention into the creative process. The rapid evolution of information services from the traditional enhanced services associated with voice telephony, such as voice mail, interactive voice menus, and store and forward fax, to advanced voice recognition and protocol processing technologies such as those offered by Tellme, was possible in large measure because of the Commission's decades-old recognition that "enhanced services would continue to develop best in an unregulated environment and, given the competitive nature of the market, regulation of enhanced services was thus unwarranted."<sup>2</sup>

Congress codified this approach in the Act, expressly distinguishing regulated "telecommunication services" from deregulated "information services," and thus compelling that this policy remain unchanged. Given the competitiveness of the marketplace and the ability of new entrants to thrive under such a non-regulatory policy, the Commission *must* "continu[e] its established policy of minimal regulation of the Internet and the services provided over it."<sup>3</sup>

Indeed, the Commission recently affirmed this policy in the *pulver.com* decision.

Chairman Powell noted in his separate statement, that:

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<sup>2</sup> See *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3317-18 (2004) [*"pulver.com Order"*]. See also *Amendment of Section 64.702 of the Commission's Rules and Regulations* (Second Computer Inquiry), Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980) [*"Computer II Final Decision"*].

<sup>3</sup> See *NPRM* at ¶ 2.

Our ruling formalizes the Commission’s policy of “non-regulation” of the Internet and, in so doing, preserves the Internet as a free and open platform for innovation. Just as important, [the] ruling removes barriers to investment and deployment of Internet applications and services by ensuring that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels.<sup>4</sup>

Tellme is particularly concerned that any shift to a regulated environment could stifle the creation of new and useful services, contrary to the Act and Commission precedent. As Chairman Powell correctly stated, “our end goal must remain a world in which consumers choose how they communicate, rather than one in which that choice is dictated to them by a monopoly or the government.”<sup>5</sup>

## **II. Tellme Is an Information Service Provider Which Is Not, and Should Not Be, Subject to Regulation as a Telecommunications Carrier.**

### **A. Any Class of IP-Enabled Services Subject to Regulation Must Be Narrowly-Defined**

The Commission appropriately seeks comment on the threshold issue in this proceeding – whether it has appropriately defined the term “IP-enabled services” for purposes of developing a regulatory scheme. In the *NPRM*, the Commission has provided a relatively broad definition of the term “IP-enabled services,” which includes services and applications relying on the Internet Protocol family.<sup>6</sup> Clearly, such a definition is substantially broader than the definition of the term “telecommunications service” established by Congress in the Act, and the Commission appropriately acknowledges the broad scope of its proposed definition.

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<sup>4</sup> See *pulver.com Order*, 19 FCC Rcd at 3326, Separate Statement of Chairman Powell.

<sup>5</sup> See *id.*

<sup>6</sup> The Commission stated that “IP-enabled ‘services’ could include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of the Internet Protocol. Some of these may be highly managed to support specific communications functions. IP-enabled ‘applications’ could include capabilities based in higher-level software that can be invoked by the customer or on the customer’s behalf to provide functions that make use of communications services.” *NPRM* at n.1.



In moving forward, the Commission obviously cannot ignore Congressional mandates on these matters. The Act clearly speaks to the issue of which IP-enabled services are appropriate subjects for regulation, distinguishing between a “telecommunications service,”<sup>7</sup> which the Commission may regulate in appropriate circumstances, and an “information service,” on the other hand, which generally is not subject to Commission jurisdiction.<sup>8</sup> It is therefore imperative that the Commission ensure that in developing a definition for “IP-enabled services,” and then classifying such services for purposes of any regulatory scheme that may be applied, it acts in a fashion that will not inadvertently create an over-inclusive regulatory regime that sweeps in IP-enabled services or applications which are, in fact, “information services.” If the Commission casts too wide a net, Tellme could be forced to balance new technology advances and features against the costs, expenditures and uncertainties of regulatory compliance. Such an outcome would “risk eliminating an innovative service offering that...promotes consumer choice, technological development and the growth of the Internet, and universal service objectives.”<sup>9</sup>

Indeed, in the 1998 *Stevens Report*, one of its primary precedents concerning IP telephony services, the Commission identified important policy considerations affecting the development of enhanced services that remain valid today.<sup>10</sup> The Commission found that “[a]n approach in which a broad range of information service providers are simultaneously classified as telecommunications carriers, and thus presumptively subject to the broad range of Title II

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<sup>7</sup> A “telecommunications service” is “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.” See 47 U.S.C. § 153(46).

<sup>8</sup> An information service is defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications system.” 47 U.S.C. § 153(20).

<sup>9</sup> See *pulver.com Order*, 19 FCC Rcd at 3319-20.

<sup>10</sup> See *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) [“*Stevens Report*”].

constraints, could seriously curtail the regulatory freedom that the Commission concluded in [the] *Computer II* [decision] was important to the healthy and competitive development of the enhanced-services industry.”<sup>11</sup> That admonition remains vital today.

**B. The Industry’s Migration to IP-Enabled Networks Does Not Necessitate a Major Reclassification of Existing Services, but Over Time Innovations May Expand the Scope of Offerings Classified as Information Services**

Tellme’s current service offerings fall well within the established definition of an information service; and many of the IP-enabled applications discussed by the Commission in this proceeding must be recognized as enhanced or information services that have simply evolved with technology. While the telecommunications industry’s migration to IP-based technology certainly warrants a fresh look at the way the Commission regulates all types of telecommunications services generally, and voice telephony in particular, the Commission *should not dismantle or constrict* the deregulatory framework in which information services and applications have been developed and thrived over the last few decades. Changes in technology driven by the deployment of IP-enabled services will likely outpace the Commission’s “previous interpretations of statutory terms.”<sup>12</sup> The Commission must therefore be wary of classifying an IP-enabled information service as a “telecommunications service” based on a dated statutory interpretation that may no longer have relevance in an IP environment.

Advanced or enhanced directory assistance and similar services using the PSTN have long fallen under the enhanced/information services rubric. In its *Computer II* decision, for example, the Commission differentiated between a traditional computer directory assistance database and AT&T’s so-called “Dial-it” service, which also provided information about news,

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<sup>11</sup> See *Stevens Report*, 13 FCC Rcd at 11524-25.

<sup>12</sup> See *NPRM* at ¶ 44.

stock prices and other information that could be retrieved by customers.<sup>13</sup> As the Commission explained, such services “constitute more than the common carrier offering of a channel of communication and [therefore] clearly fall outside the scope of a basic service.”<sup>14</sup> The Commission more recently affirmed that reverse directory assistance “is enhanced to the extent that it involves computer processing applications that act on the format or content of the subscriber’s transmitted information to provide the subscriber with additional information.”<sup>15</sup>

While certain traditional directory assistance services have been regulated as “adjunct to basic,” it is the service offered by the carrier to the end user that falls within that category.<sup>16</sup> The underlying services offered by vendors to carriers to provide enhanced directory services, however, are not so regulated. Moreover, enhanced services such as #121 and 1-800-555-TELL service, underscore that technology has changed the traditional assumption that even so-called “adjunct to basic” services are somehow integral to a carrier’s telecommunications services or network. Such services now entail far more than a computer database of phone numbers embedded at the LEC central office. Tellme’s enhanced directory services, for example, are entirely separate from the PSTN, and are substantially evolved from a simple basic directory assistance listing. In fact, a basic phone number listing is incidental to and only one of the many

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<sup>13</sup> The Commission has determined that certain services, including computer-provided directory assistance, fall within the literal definition of an “enhanced service,” but given their basic purpose and assistance in facilitating the completion of calls through utilization of basic telephone service facilities would be regulated as a basic service subject to regulation. *See Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities*, Notice of Proposed Rulemaking, 13 FCC Rcd 20391, 20441-42 (1998).

<sup>14</sup> *North American Telecommunications Association*, Memorandum Opinion and Order, 101 FCC 2d 349 (1985) [“Centrex Order”] (citing *Amendment of Section 64.702 of the Commission’s Rules and Regulations* (Second Computer Inquiry), Memorandum Opinion and Order, 84 FCC 2d 50 (1980)).

<sup>15</sup> *Petition of Nevada Bell, et al, Telephone Companies To Provide Operator-Assisted Reverse Directory Assistance Services and Electronic Reverse Directory Assistance Services and for Waivers of and/or Forbearance from Any Comparably Efficient Interconnection or Telecommunications Act of 1996 Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 19255 (2001).

<sup>16</sup> *See Centrex Order*, 101 FCC 2d at 359-60 (stating that “[c]omputer-provided directory assistance involves the provision to the customer of” information).

applications facilitated by Tellme's services (discussed below), which are far removed from the provision of basic telecommunications. In other words, regulatory distinctions the Commission applied to traditional directory assistance services in the 1980s are far less tenable when applied to modern IP-enabled services. The Commission's observation that IP-enabled technology has "erode[d] the links among the facility, the protocol and the application more systematically than previous services" is correct and is particularly prescient with respect to enhanced directory assistance services;<sup>17</sup> indeed, a service that was once "adjunct to basic" can evolve such that it is no longer even affiliated with a basic service.

Tellme's technology continues the advances in customer services that were discussed in the Commission's earlier cases, demonstrating that while services and technologies may have evolved considerably, the deregulatory approach for information/enhanced services retains legitimacy. IP-enabled technologies, including Voice-over Internet Protocol ("VoIP"), enable Tellme and its carrier customers to offer such services more efficiently, reliably, and at lower cost to end users, and the functionality that Tellme's services provide is, for end users, similar to traditional enhanced and information services, but only in some respects. In fact, end users while accessing Tellme's directory listings also can obtain access to a panoply of information or applications (such as Fandango movie listings, and provision of information to the customer via SMS messaging, directory voice activation and text-to-speech). Tellme's services also facilitate much more comprehensive interaction between consumers and information databases. Indeed, to the extent that there is a parallel service to Tellme's services, it is Internet browsing, *not* traditional directory assistance.<sup>18</sup> Such technological enhancements made possible by IP-enabled

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<sup>17</sup> See *NPRM* at ¶ 37.

<sup>18</sup> Thus, to the extent the Commission adopts a "functional equivalence" test, Tellme's services clearly are akin to an information service rather than telecommunications service. See *NPRM* at ¶ 37.

services provide a basis for expanding -- and in no case constricting -- the Commission's underlying deregulatory framework, and render the Commission's deregulatory policies if anything even more relevant to ensure that such services may continue to be developed in a competitive, market-driven environment.

**C. An Information Service Provider's Mere Use of Telecommunications in its Offering Does Not Render it a Provider of Telecommunications Services.**

The Commission in the *NPRM* raises questions concerning the significance of transmission facilities ownership to its regulation of IP-enabled services.<sup>19</sup> While Tellme appreciates the potential relevance of this issue, nothing in the evolution of IP-based services should change the Commission's long-standing recognition, confirmed recently in the *pulver.com Order*, that a provider of information services "may 'use' some telecommunications to provide its ... service but that does not make [the service] itself telecommunications."<sup>20</sup> As noted in the *pulver.com Order*, mere use of telecommunications does not render a service a telecommunications service, even when real-time voice communication is involved.<sup>21</sup>

The architecture over which Tellme's services are provided amply underscores this point. Tellme utilizes IP-enabled network components in order to provide its services to its carrier customers, but that, in itself, does not make Tellme a provider of telecommunications services.<sup>22</sup> Consistent with the Act's definition of information services, Tellme's role in a carrier's completion of a call is part processing, part utilizing and part making available information via telecommunications. Tellme is not providing telecommunications services to the end user. In

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<sup>19</sup> See *NPRM* at ¶ 37.

<sup>20</sup> See *pulver.com Order*, 19 FCC Rcd at 3312.

<sup>21</sup> *Id.*

<sup>22</sup> As an example, if an AT&T Wireless customer dials #121 on his mobile phone, that subscriber will be connected over the AT&T Wireless network to Tellme. Tellme will provide directory assistance via its voice prompt or a similar advanced service feature. Tellme may then use VoIP technology (purchased from and provisioned by other carriers) to re-route the call back to AT&T Wireless who will complete the call for its customer.

this context, telecommunications is merely an input to the underlying information service – precisely as Congress defined “information service” in the Act.<sup>23</sup>

**D. The Various Regulatory Paradigms Discussed in the *NPRM* Can and Must Be Reconciled with Congress’s Deregulatory Mandate**

The Commission seeks comment on a number of regulatory paradigms and approaches it could use in determining the appropriate regulation, if any, of IP-enabled services.

***Layered Approach.*** The Commission requests comment regarding a “layered” model to address VoIP and IP-enabled services. Such an approach would not differentiate among the various platforms, but instead among various aspects of a particular offering. For example, the Commission states that it could distinguish between “(1) the underlying transmission facility, (2) the communications protocols used to transmit information over that facility, and (3) the applications used by the end user to issue and receive information.”<sup>24</sup>

To the extent that regulation of IP-enabled is compelled by statute or otherwise necessary in the public interest, the layered approach can offer a legitimate -- but imperfect -- framework. Under a layered model, the Commission proposes that “a provider’s ownership of bottleneck facilities might warrant economic regulation of the facilities ‘layer’ but not of the applications that traverse those facilities.”<sup>25</sup> The key element, in Tellme’s view, is the ownership of *bottleneck* facilities; merely owning facilities utilized in providing an information service should

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<sup>23</sup> In the Commission’s current proceeding addressing CALEA implementation in the VoIP context, numerous parties have similarly pointed out that an entity’s mere use of a server or router does not establish that a service is a telecommunications service. Virtually every information service is built on a foundation consisting of servers, which perform computer processing, and routers, that typically route information via Internet protocol or, in Tellme’s case, IP-based transport facilities. The mere presence of such telecommunications component underlying a service does not render it a telecommunications service subject to Commission regulation. *See, e.g.*, ISP CALEA Comments, RM-10865, at 19 n.64 (filed April 12, 2004); *see also Stevens Report* at 11529-30 (stating that an information service is not converted to a telecommunications service simply because it contains telecommunications components).

<sup>24</sup> *See NPRM* at ¶ 37.

<sup>25</sup> *See id.*

not subject the information service provider to regulation. Tellme does not own any of the underlying transmission facilities it currently uses; but even if, in the future, Tellme acquired its own IP-based transport facilities, it would certainly not be a dominant provider, and thus such ownership would not trigger any legitimate need for economic regulation.<sup>26</sup> If the layered approach is to be the chosen model, then regulation of the facilities layer must be limited to providers only of bottleneck facilities.

***Private Carriage vs. Common Carriage.*** The Commission also seeks comment on whether it should differentiate between IP-enabled services that are offered as “common carriage” and those that are offered on a “private carriage” basis. Tellme agrees that such a distinction is relevant to the Commission’s decision in this proceeding, and certainly such distinction is consistent with the regulatory regime contemplated in the Communications Act. As the Commission explained in the *Stevens Report*, “Congress intended to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their services ‘via telecommunications.’”<sup>27</sup> Again, Tellme demonstrates the validity of such a distinction. Tellme chooses its clients on an individual basis and negotiates individualized terms and conditions. Thus, even to the extent that components of Tellme’s services might be included under an IP-driven definition of “telecommunications,” it does so on a private carriage basis utilizing VoIP technology to transmit calls between its own network and those of its private enterprise customers. Indeed, most of Tellme’s services can or will use VoIP technology simply to integrate Tellme’s centralized servers with the telecommunications

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<sup>26</sup> See *id.* at ¶ 27.

<sup>27</sup> *Stevens Report*, 13 FCC Rcd at 11511.

provider's network, which is nothing more than a private connection between Tellme and the carrier and therefore, not subject to any form of regulation.<sup>28</sup>

### **III. Tellme and Other Telecommunications Services Customers Already Support Commission Regulatory Programs**

The Commission requested comment on how IP-enabled services will affect certain regulatory and policy objectives. Specifically, the Commission has asked for comment on whether universal service contribution obligations should extend to both facilities-based and non-facilities-based providers of IP-enabled services and how a migration to IP-enabled services will affect contributions to the interstate telecommunications relay services fund.<sup>29</sup>

There is simply no need or statutory basis to extend contribution obligations to providers of information services such as Tellme. Such information services providers already effectively contribute indirectly to regulatory programs through the rates that they pay to the providers of their underlying telecommunications services. This fact will remain unchanged regardless of how the Commission revises telecommunications carriers' payment obligations, and it would effectively create a double payment if they were also subject to direct payment obligations.

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<sup>28</sup> Tellme functions in conjunction with the customer control routing ("CCR") to act for, and as, a "subscriber" to the telecommunications carrier. Tellme uses VoIP technology to route calls between Tellme and its enterprise customers in lieu of routing all calls through the telecommunications carrier. This difference is important in distinguishing between the private function performed by Tellme and the public function provided by the telecommunications provider.

<sup>29</sup> See *NPRM* at ¶¶ 60 & 63.



## **CONCLUSION**

For the foregoing reasons, Tellme urges the Commission to regulate IP-enabled services narrowly, to the extent it needs to do so at all. If the Commission opts to regulate, Tellme urges the Commission to retain and, where necessary, expand the deregulatory “hands off” approach for enhanced and information services as mandated by the Communications Act.

Respectfully submitted,

**TELLME NETWORKS, INC.**

By: /s/ Ben H. Lyon  
General Counsel

May 28, 2004